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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RABINDRANATH DUTTA and
KARTHIKEYAN RAMAMOORTHY

Appeal 2008-4046
Application 09/895,097
Technology Center 3600

Decided: December 2, 2008

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-10 and 12-34. Claim 11 has been cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We REVERSE.

THE INVENTION

The Appellants' claimed invention is directed to a method and apparatus providing a user rating service for online auctions. Objective criteria are combined with subjective criteria to create a user profile. (Specification, 4). Claim 1, reproduced below, is representative of the subject matter of appeal.

1. A method of rating an online auction user comprising the steps of:
 - receiving personal information regarding the user;
 - based on the personal information, obtaining objective information by a Registration Server about the user from a third party; and
 - formulating an initial value by the Registration Server for a reliability rating based on at least the objective information.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Wellman US 6,952,682 B1 Oct. 4, 2005

Ebay-non-patent literature from www.archive.org March 01, 2000.

The following rejection is before us for review:

1. Claims 1-10 and 12-34 are rejected under 35 U.S.C. § 103(a) as unpatentable over Wellman and eBay.

THE ISSUE

The issue is whether the Appellants have shown that the Examiner erred in rejecting the claims 1-10 and 12-34 as under 35 U.S.C. § 103(a) as unpatentable over Wellman and eBay.

This issue turns on whether the prior art discloses “formulating an initial value by the Registration server for a reliability rating based on at least the objective information”.

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence¹:

- FF1. Wellman does not disclose that an initial value for a reliability rating is formulated by the Registration Server.
- FF2. The eBay reference does not disclose that an initial value for a reliability rating is formulated by the Registration Server.

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of

¹ See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

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underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [Graham] factors continue to define the inquiry that controls.”)

ANALYSIS

The Appellants argue that the rejection of claims 1-10 and 12-34 under 35 U.S.C. § 103(a) as unpatentable over Wellman and eBay is improper because “eBay is devoid of any reference to a registration server as recited in claim 1” (Br. 11).

The Examiner has determined that the eBay reference discloses a feedback forum “by the Registration Server” (Ans. 4). The Examiner responds to the Appellants’ argument that the eBay reference does not show formulating an initial value by the Registration Server by stating:

The Applicants then argued that eBay does not show (sic) "formulating an initial value by the Registration Server for a reliability rating bases on at least the objective information." The Examiner refutes this argument, eBay clearly formulates and initial value as can be seen from the "Feedback rating system is easy. You receive +1.... "These points are used to calculate or formulate feedback rating or reliability rating. Clearly adding and subtracting points is "formulating an initial value" (Ans. 8).

The Examiner concludes that Wellman in view of eBay does clearly show formulating an initial value by the Registration Server for a reliability rating based on at least the objective information (Ans. 8).

We agree with the Appellants. Independent claims 1, 9, 19, and 27 all include a limitation for “formulating an initial value by the Registration Server for a reliability rating based on at least the objective information”. Wellman does not disclose that an initial value for a reliability rating is formulated by the Registration Server (FF1). The eBay reference also does not disclose that an initial value for a reliability rating is formulated by the Registration Server (FF2). As noted by the Appellants, the eBay reference is completely devoid of any reference to a “Registration Server”. The Examiner has failed to provide any reference to a “Registration Server” in either the reference of Wellman or eBay as required by the limitation in the claims.

For the above reason the rejection of claims 1, 9, 19, and 27 under 35 U.S.C. § 103(a) as unpatentable over Wellman and eBay is not sustained. The rejection of dependent claims 2-8, 10, 12-18, 20-26, and 28-34 under 35 U.S.C. § 103(a) as unpatentable over Wellman and eBay is not sustained for the same reasons.

CONCLUSIONS OF LAW

We conclude that Appellants have shown that the Examiner erred in rejecting claims 1-10 and 12-34 under 35 U.S.C. § 103(a) as unpatentable over Wellman and eBay.

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DECISON

The Examiner's rejection of claims 1-10 and 12-34 is not sustained.

REVERSED

LV:

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